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ATTORNEY FOR PLAINTIFF  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL BLAKE DEFRANCE,

Defendant.

CR 21-29-M-DLC

BRIEF IN SUPPORT OF MOTION  
FOR A PRELIMINARY ORDER OF  
FORFEITURE

The United States of America, represented by Jennifer S. Clark, Assistant United States Attorney for the District of Montana, has filed an opposed motion for preliminary order of forfeiture. In support of that motion, the United States sets forth the following facts:

1. On July 28, 2021, a grand jury returned an indictment (Doc. 2).

2. On August 26, 2021, the grand jury returned a Superseding Indictment (Doc. 21) charging DeFrance with one count of prohibited person in possession of firearms and ammunition. The indictment also contains a forfeiture allegation seeking the forfeiture of any firearms and ammunition involved in any knowing violation of 18 U.S.C. § 922(g)(9).

3. On October 21, 2021, the grand jury returned a Second Superseding Indictment (Doc. 55) charging one count of prohibited person in possession of firearms and ammunition and three counts of false statements during a firearms transaction. The Second Superseding Indictment also contained a forfeiture allegation seeking the forfeiture of any firearms and ammunition involved in any knowing violation of 18 U.S.C. § 922(g)(9) and 18 U.S.C. § 922(a)(6).

4. This Court presided over a bench trial on April 26 and April 27, 2023. (Docs. 170-171).

5. On May 1, 2023, this Court issued Findings of Fact and Conclusions of Law, finding DeFrance guilty on all counts in the Second Superseding Indictment. (Doc. 182).

6. A Preliminary Order of Forfeiture is necessary in order for the Federal Bureau of Investigations and the United States Marshals Service to seize the following property, which is subject to forfeiture:

- Smith and Wesson Lady Smith .357 revolver, SN DAW6108, and five .357 rounds

7. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, the Court may enter a preliminary order of forfeiture after a verdict has been returned containing a finding that property is subject to criminal forfeiture or if a defendant enters a guilty plea subjecting property to such forfeiture. Rule 32.2 does not require the Court to await sentencing in order to commence the ancillary proceeding by entering its preliminary order of forfeiture.

8. The Court must determine what property is subject to forfeiture and if the government has established the requisite nexus between the property and the offense. Fed. R. Crim. P. 32.2(b)(1)(A). The Court may make the determination based on evidence already in the record. Fed. R. Crim. P. 32.2(b)(1)(B). The evidence set forth in the Findings of Fact and Conclusions of Law provides an ample basis for an order of forfeiture in accordance with 18 U.S.C. § 924(d).

9. Upon issuance of a Preliminary Order of Forfeiture, the United States will provide written notice to all third parties asserting a legal interest in any of the above-described property and will post notice on an official government internet site ([www.forfeiture.gov](http://www.forfeiture.gov)) for at least 30 consecutive days as required by Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, of the Court's preliminary order and the United States' intent to dispose of the property in such manner as the Attorney General may direct, pursuant to 18 U.S.C. § 924(d) and 21 U.S.C. § 853(n)(1).

10. The preliminary order of forfeiture becomes final as to the defendant at sentencing. Fed. R. Crim. P. 32.2(b)(4)(A).

Accordingly, the United States respectfully requests this Court to enter the preliminary order of forfeiture tendered herewith, for the reasons set forth above.

DATED this 11th day of September, 2023.

JESSE A. LASLOVICH  
United States Attorney

/s/ Jennifer S. Clark  
JENNIFER S. CLARK  
Assistant U.S. Attorney

### **CERTIFICATE OF COMPLIANCE**

Pursuant to local rule, I hereby certify that the foregoing document is proportionately spaced, has a typeface of 14 points or more, and the body of the brief contains 561 words.

DATED this 11th day of September, 2021.

/s/ Jennifer S. Clark

JENNIFER S. CLARK

Assistant U.S. Attorney